

the contract in receiving inadvertently disbursed funds; rather, plaintiff is contending that defendants failed to comply with their common law duty to return those funds. See Peed v. Burleson's, Inc., 244 N.C. 437, 439 (1956); Addison Whitney, LLC v. Cashion, 17 CVS 1956, 2017 WL 2506604, at *6 (N.C. Super. June 9, 2017) (holding that “[c]onversion is a tort with deep roots in the common law.”).

Applying North Carolina conflict of laws rules, the law applicable to the *situs* of the claim applies here. Boudreau v. Baughman, 322 N.C. 331, 335 (1988). Plaintiff contends that it mistakenly sent the funds to defendants in North Carolina and that defendants did not thereafter return those funds. North Carolina law, therefore, will be applied to Count One. While defendants argue that the claim of conversion should be recast as a breach of contract claim, the Court does not agree inasmuch as “the cause of action for conversion of assets was not based on the validity, interpretation, construction or performance of the agreement.” Edmondson v. American Motorcycle Association, Inc., 54 F.Supp. 544, 551 (W.D.N.C. 1999), *aff’d in relevant part*, 7 F. App’x 136, 146-48 (4th Cir. 2001).

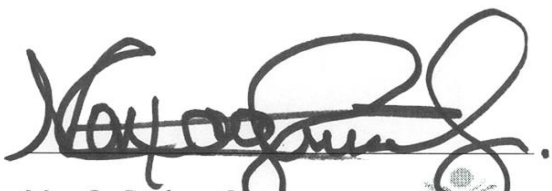
Having considered defendants’ motion and reviewed the pleadings, the court enters the following Order.

ORDER

IT IS, THEREFORE, ORDERED that the remainder of defendants’ Motion to Dismiss (#13) is **DENIED**.

Defendants are instructed to Answer the remainder of the Complaint within 14 days.

Signed: September 5, 2017



Max O. Cogburn Jr.
United States District Judge